

ATTORNEY GENERAL
DEPARTMENT OF JUSTICE

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

KELLY A. AYOTTE
ATTORNEY GENERAL



MICHAEL A. DELANEY
DEPUTY ATTORNEY GENERAL

August 5, 2005

Section 5 Submission

Chief, Voting Section
Civil Rights Division
Room 7254 – NWB
Department of Justice
950 Pennsylvania Ave., NW
Washington, DC 20006

Re: Submission Under Section 5 of the Voting Rights Act for:

New Hampshire Revised Statute Annotated ("RSA") 654:15, a STATUTE related to party registration, most recently amended by Laws of 1981 Chapter 308 and previously amended by the chapters cited below.

Dear Voting Section Chief:

Pursuant to 42 U.S.C. § 1973 (c), the State of New Hampshire, through the Office of the New Hampshire Attorney General, hereby submits RSA 654:15, a STATUTE related to party registration, most recently amended by Laws of 1981 Chapter 308 and previously amended by the chapters cited below.

SUBMISSION:

In accordance with 28 C.F.R. § 51.27, the submission is as follows:

- a) Chapter 308 (1981) amending RSA 654:15 is attached. (Exhibit 654:15 A)
- b) Chapter 436 (1979) recodifying RSA 56:039 as RSA 654:15 is attached. (Exhibit 654:15 B)
- c) The changes made by amendments to RSA 654:15 are as follows:

1. Chapter 308 (1981) removes the phrase “...but, if such voter has already been registered in any town or ward in this state as a member of any party, he shall not be registered as a member of a different party closer in time to the primary than the day immediately prior to the first day for the filing of a declaration of candidacy...” from the end of the first sentence of this statute
 2. Chapter 436 (1979) recodified RSA 56:039 as RSA 654:15
- d) This submission is made by: Senior Assistant Attorney General Orville B. Fitch II, 33 Capitol Street, Concord, New Hampshire 03301, Phone: (603) 271-1238.
 - e) The submitting authority is New Hampshire Attorney General, Kelly A. Ayotte for the State of New Hampshire.
 - f) Not applicable.
 - g) The changes for which pre-clearance is sought were made by a decision of the New Hampshire General Court (Legislature).
 - h) In accordance with Amendment X of the U.S. Constitution, the New Hampshire General Court, the State’s legislature, acting pursuant to the New Hampshire Constitution Part Second, Article 2, granting supreme legislative power within the state to the House and Senate, who with right to negate each other are granted power to make law through Part Second, Article 5. Additional authority regarding election law is vested in Part First, Article 11.

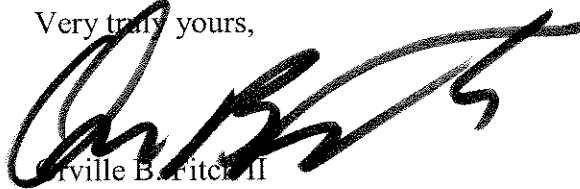
The legislature through a bicameral process passed law to create Chapter 308 (Exhibit 654:15 A). The bill was signed into law (by the Governor) on June 16, 1981, pursuant to New Hampshire Constitution Part Second, Article 44.

- i) Adoption dates:
 1. Chapter 308 (1981) adopted June 16, 1981
 2. Chapter 436 (1979) adopted June 25, 1979
- j) Effective dates:
 1. Chapter 308 (1981) effective August 15, 1981
 2. Chapter 436 (1979) effective July 1, 1979

- k) The changes have been enforced.
- l) The changes affect the entire State of New Hampshire.
- m) The purpose for the changes are as follows:
 - 1. The purpose of the Chapter 308 (1981) change is to remove a restriction on changing party affiliation between the day before the filing period for candidates begins and the primary from this statute. The effect on the election law overall is not significant because this restriction is inserted into RSA 654:34 (*The change to RSA 654:34 will be addressed in a separate submission for that statute.*).
 - 2. The purpose of the Chapter 436 (1979) change is to recodify RSA 56:039 as RSA 654:15.
- n) These changes do not negatively target any protected class under section 5 of the Voting Rights Act of 1965. 42 U.S.C. § 1973 (c). They are expected to have neutral impact and do not meet the test of retrogression defined in *Reno v. Bossier Parish Sch. Bd*, 520 U.S. 471, 478 (1997). “(T)he ability of minority groups ... to elect their choices to office” will not be diminished. *Beer v. U.S.*, 425 U.S. 130, 141 (1976).
- o) None known.
- p) RSA 654:15 was precleared through 1979 on June 22, 2004 by D.O.J. file numbers 2004-2563, 2004-2581 and 2004-2582. A copy of this preclearance is attached as Exhibit 654:15 C. This submission seeks preclearance of all subsequent changes.
- q) Not applicable as this is not a redistricting plan.
- r) Exhibit 654:15 D is a copy of a Press Release of this submission, its availability, and inviting comment to federal Department of Justice.

I expect the foregoing information is sufficient to enable the United States Attorney General to make the required determination pursuant to Section 5 of the Voting Rights Act. If further information is required or would be helpful, please contact me.

Very truly yours,

A handwritten signature in black ink, appearing to read "erville B. Fitch II", written over the typed name.

erville B. Fitch II
Senior Assistant Attorney General
Civil Bureau
(603) 271-1238
bud.fitch@doj.nh.gov

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1981]

CHAPTER 308

315

132:12-d Recovery by the State. Upon a determination that a person has fraudulently obtained funds under this program, the state may bring an action to recover the funds. Any funds so recovered shall be remitted to the proper federal officials as required under federal law or regulation. Demand and payment of these funds shall not relieve or discharge any person of liability, either civil or criminal, for additional amounts or penalties as may be prescribed under any other applicable law.

307:3 Penalties Expanded. Amend RSA 132:15 as amended by striking out said section and inserting in place thereof the following:

132:15 Penalties. Any person committing a fraud on the women, infants, and children program under RSA 132:12-a shall be charged under RSA 638:15. Any person violating any other provision of this subdivision or any rule adopted under this subdivision shall be guilty of a misdemeanor.

307:4 Criminal Penalties for Fraud. Amend RSA 638 by inserting after section 14 the following new section:

638:15 Fraud on the Women, Infants, and Children (WIC) Program.

I. A person is guilty of fraud on the women, infants, and children program if he is a vendor who embezzles, purposely misapplies, steals, or obtains by fraud or theft any funds, assets, or property provided under RSA 132:12-a or if he receives, conceals, or retains such funds, assets, or property for his own use, knowing them to have been embezzled, purposely misapplied, stolen, or obtained by fraud or theft.

II. Fraud on the women, infants, and children program is:

(a) A class A felony where the value of the funds, assets, or property exceeds \$1,000;

(b) A class B felony where the value of the funds, assets, or property exceeds \$100, but is not more than \$1,000;

(c) A misdemeanor in all other cases.

III. A person is guilty of a misdemeanor if he is a participant who:

(a) By a purposely false statement or misrepresentation or by impersonation or other purposely fraudulent act or device attempts to obtain or obtains funds under RSA 132:12-a to which he is not entitled;

(b) Purposely and knowingly aids or abets any person, by a purposely false statement or misrepresentation or by impersonation or other purposely fraudulent act or device, to attempt to obtain or obtain funds under RSA 132:12-a to which the person is not entitled;

(c) Purposely fails to disclose the receipt of property, wages, income, or resources or any change in circumstances that would affect his eligibility for assistance under RSA 132:12-a, to obtain funds or assistance to which he is not entitled.

307:5 Effective Date. This act shall take effect 60 days after its passage.

[Approved June 16, 1981.]

[Effective Date August 15, 1981.]

CHAPTER 308 (HB 879)

AN ACT RELATIVE TO THE TIME FOR CHANGING PARTY
AFFILIATION AND FILING CANDIDACIES
FOR THE STATE PRIMARY ELECTION.

Be it Enacted by the Senate and House of Representatives in General Court convened:

308:1 Party Registration. Amend RSA 654:15 (supp) as inserted by 1979, 436:1 by striking out said section and inserting in place thereof the following:

654:15 Party Registration. Whenever names are added to the checklist the supervisors shall register the party membership of the voter if he desires such membership registered. The party membership of each voter may be registered by writing in ink, printing, or rubber stamping after the name of such voter the first 3 letters of the name of the party with which he registers.

308:2 Checklist Session. Amend RSA 654:32 (supp) as inserted by 1979, 436:1 as amended by striking out said section and inserting in place thereof the following:

654:32 Hearings on Alterations to Party Registration. Before each state or presidential primary election, the supervisors of the checklist shall be in session before each primary for the change of registration of legal voters as provided in RSA 654:34 or 654:34-a or both. Before the presidential primary, the sessions shall be on 2 days, at least, and at such other times as they deem necessary, and shall not be closer in time to such primary than the day immediately prior to the first day for the filing of nomination petitions. Before the state primary election, the sessions shall be on 2 days, at least, and at such other times as they deem necessary, and the last one shall be on the Tuesday before the first Wednesday in June for at least 2 hours between 6 p.m. and 9 p.m.

308:3 Reference Changed. Amend the introductory paragraph of RSA 654:34, I(a) (supp) as inserted by 1979, 436:1 as amended by striking out in line 4 the reference "RSA 654:15" and inserting in place thereof the following (paragraph IV) so that said paragraph as amended shall read as follows:

(a) Any legal voter whose party membership has been registered may change such registration by appearing in person before the supervisors of the checklist for his town or ward any time they meet, except as prohibited by paragraph IV, and stating to them under oath or affirmation, if required, that:

308:4 Another Reference Changed. Amend RSA 654:34, II(a) (supp) as inserted by 1979, 436:1 as amended by striking out in line 4 the reference "RSA 654:15" and inserting in place thereof the following (paragraph IV) so that said paragraph as amended shall read as follows:

(a) Any legal voter who has not been registered as a member of any party may register as a member of the party of his choice by appearing before the supervisors of the checklist for his town or ward any time they meet, except as prohibited by paragraph IV, and stating to them, under oath or affirmation, if required, that he intends to affiliate with and generally supports the candidates of the party with which he offers to register, in which case he shall be registered as a member of such party.

308:5 New Paragraph. Amend RSA 654:34 by inserting after paragraph III the following new paragraph:

IV. No person, who is already registered to vote, whether his party membership has been previously registered or not, shall affiliate with a party or disaffiliate from a party between the first Wednesday in June and the day before the state primary election.

308:6 Further Reference Changed. Amend RSA 654:34-a, VII (supp) as inserted by 1979, 400:1 by striking out in line 8 the number "654:15" and

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inserting in place thereof the following (654:34, IV,) so that said paragraph as amended shall read as follows:

VII. The town or city clerk shall present to the next meeting of the supervisors of the checklist, in accordance with the checklist guidelines as provided by RSA 654:25, the name of any person who made application to him for a change of party affiliation and the name of the party with which he desires to be affiliated or that he desires to be affiliated with no party. The supervisors of the checklist shall cause the party affiliation of the applicant to be changed on the checklist. Any change submitted which is prohibited by the provisions of RSA 654:34, IV, shall be retained by the supervisors; and the change shall be made as soon as permitted by law.

308:7 Filing Period Altered. Amend the introductory paragraph of RSA 655:14 (supp) as inserted by 1979, 436:1 by striking out said paragraph and inserting in place thereof the following:

The name of any person shall not be printed upon the ballot of any party for a primary unless he is a registered member of that party, he shall have met the age and domicile qualifications for the office he seeks at the time of the general election, he meets all the other qualifications at the time of filing, and he shall file with the appropriate official between the first Wednesday in June and the third Wednesday in June a declaration of candidacy as provided in RSA 655:17, and

308:8 Supplementary Petitions. Amend RSA 655:26 (supp) as inserted by 1979, 436:1 by striking out in line 8 the words "less than 75 days before the primary" and inserting in place thereof the following (later than the third Wednesday in June) so that said section as amended shall read as follows:

655:26 Examination and Rejection. The officer with whom primary petitions are filed shall immediately upon receipt thereof examine the same and ascertain whether they conform to the law. If found not to conform thereto or to be conflicting as provided in RSA 655:23, he shall then endorse thereon the reason why such petition cannot be accepted and shall, within 24 hours, return the same to the candidate in whose behalf it was filed. In such case, the candidate may file supplementary petitions with the official but not later than the third Wednesday in June.

308:9 Effective Date. This act shall take effect 60 days after its passage.

[Approved June 16, 1981.]

[Effective Date August 15, 1981.]

CHAPTER 309 (HB 883)

AN ACT CREATING AN AIRPORT DISTRICT BETWEEN THE CITY OF MANCHESTER AND THE TOWN OF LONDONDERRY.

Be it Enacted by the Senate and House of Representatives in General Court convened:

309:1 Manchester-Londonderry Airport District.

I. The city of Manchester and the town of Londonderry are hereby authorized to establish an airport district in accordance with the intermunicipal agreement made on March 3, 1981, between Manchester and Londonderry.

II. The district shall consist of all lands approved by the voters of the town of Londonderry at the town meeting held in March, 1981, Article 24 as amended.

(c) Proof of domicile in the form of an affidavit declaring that the applicant has a domicile and intends to maintain a domicile for an indefinite period in the town, city or ward in which he desires to vote; and

(d) any other evidence they may request.

II. The supervisors may refuse to add the name of an applicant to the checklist if he fails to present the evidence required by this section.

654:13 Action by Supervisors.

I. If the supervisors decide to add the name of the applicant to the checklist, then they shall retain the original of the triplicate registration form for their own file, forward one copy to the supervisors of the checklist of the city or town of the applicant's last voting address if said address is in the state of New Hampshire, and send another copy to the clerk of their town or city.

II. If the supervisors decide not to add the name of the applicant to the checklist, they shall send notification in writing to the applicant within 7 days stating the reason for the denial. They shall write the word "REJECTED" and the date of rejection across the registration form. They shall retain the original in a separate file for proof that such an application was made.

654:14 Complaint to Superior Court. Any applicant may file, as provided in RSA 654:42, a complaint with the superior court stating that his name has been illegally kept from the checklist and asking to have his name added thereto for the reasons stated in the complaint.

654:15 Party Registration. Whenever names are added to the checklist, the supervisors shall register the party membership of the voter if he desires such membership registered; but, if such voter has already been registered in any town or ward in this state as a member of any party, he shall not be registered as a member of a different party closer in time to the primary than the day immediately prior to the first day for the filing of a declaration of candidacy. The party membership of each voter may be registered by writing in ink, printing, or rubber stamping after the name of such voter the first 3 letters of the name of the party with which he registers.

Absentee Voter Registration

654:16 Applicability. Any person who has his domicile in any town or city in this state and is qualified to vote therein at the next subsequent election to be held in said town or city except for the fact that his name does not appear on the checklist to be used at the election, and who is temporarily absent therefrom or who by reason of physical disability is unable to attend a meeting of the supervisors of the checklist, may cause his name to be added to such checklist by applying to the city or town clerk or the secretary of state for a voter registration form provided for in RSA 654:7 and an appropriate absentee registration affidavit provided for in RSA 654:17.

654:17 Absentee Registration Affidavit.

I. The absentee registration affidavit shall be prepared by the secretary of state and shall be in substantially the following form:

Affidavit (Absence from Town)

I, _____, do hereby depose as follows:

- 1) That my legal domicile is in the town of _____, New Hampshire. I will be of the age of 18 years or over on election day and am entitled to vote in the election to be held in said town on _____, 19____, except for the fact that my name does not appear on the checklist to be used in said town at such election;
- 2) That I do not intend to be present within said town at such time prior to

said election as shall enable me personally to appear before the supervisors of the checklist of said town in their regular sessions for the correction of the checklist for said election;

- 3) That I am temporarily residing in _____ (city and state or city, province and country); and
- 4) That I hereby make application for the addition of my name to the checklist of said town to be used at said election.

Signature of Applicant

Affidavit (Physical Disability)

I, _____ do hereby depose as follows:

- 1) That my legal domicile is in the town of _____ New Hampshire, I will be of the age of 18 years or over on election day and am entitled to vote in the election to be held in said town on _____, 19____, except for the fact that my name does not appear on the checklist to be used in said town at such election;
- 2) That I am unable by reason of physical disability personally to appear before the supervisors of the checklist of said town in their regular sessions for the correction of the checklist for said election;
- 3) That I hereby make application for the addition of my name to the checklist of said town to be used at said election.

Signature of Applicant

II. There shall be printed below each of the foregoing affidavits the following certificate:

Certificate

I, _____, the undersigned officer, do hereby certify that on the _____ day of _____, 19____, the above named _____, having satisfied me as to his identity, subscribed the foregoing affidavit in my presence, and did before me swear to (or affirm) the truth of the statements therein contained.

Signature of Officer

Title

654:18 Forwarding. The voter registration form, absentee registration affidavit and certificates shall be forwarded directly to the applicant by the city or town clerk or by the secretary of state.

654:19 Execution; Submission; Effect. The absentee registration affidavit shall be executed before a person authorized to perform pursuant to the provisions of RSA 456-A. Such officer, after a certificate, shall attach thereto proof of his official capacity and the affidavit and certificate along with the applicant's registration clerk of the town or city named for submission to the supervisor's checklist. If the supervisors find that the affidavit and certificate executed, they shall follow the procedure for applications made provided in RSA 654:11, 654:13, and 654:15.

Overseas Citizens Voting: Federal Elections Only

654:20 Affidavit; Certificate.

I. Any person qualified to vote as an overseas voter in a city or town as

FISCAD-Bayonne, N. J.

EXHIBIT

65415B



U.S. Department of Justice

Civil Rights Division

PENDING 800-631-6989

EXHIBIT

654:15 C

JDR:RPL:SMC:jdh
DJ 166-012-3
2004-2563
2004-2581
2004-2582

Voting Section - NWB
950 Pennsylvania Avenue, N.W.
Washington, DC 20530

June 22, 2004

Orville B. Fitch II, Esq.
Assistant Attorney General
Civil Bureau
Department of Justice
33 Capitol Street
Concord, New Hampshire 03301-6397

Dear Mr. Fitch:

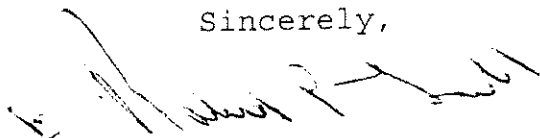
This refers to Session Law Chapter 436 (HB 575) (1979), which recodifies the election laws of the State of New Hampshire; Session Law Chapter 266 (HB 577) (2003), which implements the Help America Vote Act of 2002 (HAVA), 42 U.S.C. 15301-15545; and the adoption of formal administrative procedures for the resolution of election law complaints, including complaints filed under Title III of HAVA, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submissions on June 7, 2004.

The Attorney General does not interpose any objection to the specified changes. Regarding Session Law Chapter 266, we note that the act specifically amends the following provisions of the State's election laws: RSA 655:19, II (Chapter 387 (1991)) (to provide for the deposit of certain candidate filing fees collected by the secretary of state into the election fund); RSA 655:19-c (Chapter 387 (1991)) (to provide for the deposit of any administrative assessments paid to the secretary of state into the election fund); RSA 664:3, I (Chapter 351 (1997)) (to provide for the deposit of political committee registration fees paid to the secretary of state into the election fund); RSA 664:21, II (Chapter 351 (1997)) (to provide for the deposit of any administrative fines for violations of the State's campaign finance laws into the election fund); and RSA 665:7 (Chapter 436 (1979)) (to authorize the Ballot Law Commission to hear and resolve complaints alleging violations of Title III of HAVA, as specified).

We note also that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. In addition, as authorized by Section 5, we reserve the right to reexamine this submission if additional information that would otherwise require an objection comes to our attention during the remainder of the sixty-day review period. See Procedures for the Administration of Section 5 of the Voting Rights Act (28 C.F.R. 51.41 and 51.43).

Session Law Chapter 266 includes provisions that are enabling in nature. Therefore, the State is not relieved of its responsibility to seek Section 5 preclearance of any changes affecting voting proposed to be implemented pursuant to this legislation (e.g., creation of a centralized statewide voter registration database by the secretary of state and guidelines issued by the secretary of state implementing the database). See 28 C.F.R. 51.15.

Sincerely,

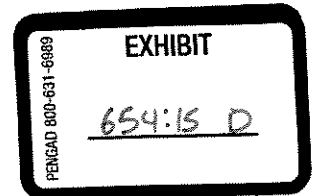
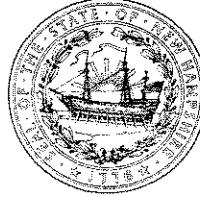
A handwritten signature in dark ink, appearing to read "Joseph D. Rich", is written over a horizontal line.

Joseph D. Rich
Chief, Voting Section

**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

KELLY A. AYOTTE
ATTORNEY GENERAL



MICHAEL A. DELANEY
DEPUTY ATTORNEY GENERAL

News Release

RELEASED BY: Attorney General Kelly A. Ayotte

SUBJECT: Voting Rights Act – Submission of a request for preclearance of changes to New Hampshire Voting laws and procedures

DATE: June 10, 2005

RELEASE TIME: Immediate

Attorney General Kelly A. Ayotte announces the submission of requests for preclearance of changes made to the election laws in New Hampshire to the Federal Department of Justice. Preclearance submissions will address changes made to New Hampshire's election laws since jurisdictions in the State became subject to preclearance.

Ten New Hampshire towns are subject to section 5 of the federal Voting Rights Act. Changes to New Hampshire election laws that affect any of these ten towns must be submitted for review by either the Federal Department of Justice or the Federal District Court for Washington D.C. The federal Department of Justice will review the changes to New Hampshire's election laws to ensure that the changes do not have the effect of denying or abridging the right to vote on account of race or color, or membership in a language minority group. Changes to New Hampshire redistricting statutes have been submitted to, and approved by, the U.S. Justice Department since the 1980 census. Federal regulations require that the public be notified that the State has filed a request for preclearance and that the submission be available for public inspection.

Copies of each submission by the Attorney General for the State of New Hampshire are available at the office of the Attorney General at 33 Capitol Street, Concord New Hampshire, 03301. Each document will also be made available at the Attorney General's Office web site at:

<http://www.doj.nh.gov/elections/>

Attorney General Ayotte and the federal Department of Justice invite persons interested in this submission to submit comments and information, in writing or by telephone, to the Voting Section of the Federal Department of Justice, Civil Rights Division, at the earliest possible date to ensure that they may be considered during the preclearance review time period. Telephone 1-800-253-3931 or (202) 307-2385 or write Chief, Voting Section, Civil Rights Division, Room 7354 – NWB, Department of Justice, 950 Pennsylvania Ave., NW, Washington, DC 20530. The envelope and first page should be marked "Comment under section 5." Additional information on the Voting Rights Act and the preclearance process can be obtained at the web site of the Federal Department of Justice at:

<http://www.usdoj.gov/crt/voting/index.htm>

The New Hampshire Attorney General's Office Voting section can be contacted at:

<http://www.doj.nh.gov/elections/>
New Hampshire Toll Free 1-866-8868-3703
or 1-866-VOTER03
electionlaw@doj.nh.gov